

The Appeal Tribunal Hearing

An Employer's Guide

Important Notice

In order to maintain New Hampshire's Unemployment Compensation grant from the U.S. Dept. of Labor, the Appeal Tribunal is required to meet strict timeliness regulations. Postponements should be requested within 48 hours of receipt of the *Notice of Hearing* included with this brochure.



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An Employer's Guide To Appeals

This pamphlet will give you information on Appeal Tribunal hearing procedures.

Is it important that you appear at the Appeal Hearing, no matter who filed the appeal? It depends.

If the issue under appeal is a separation from work, you should attend the hearing. Despite the fact that you may have submitted documents and have spoken to a Certifying Officer of this department, the Appeal Hearing will be your only opportunity to present sworn testimony and introduce documents as exhibits. It will also be your only opportunity to question the claimant and have those responses recorded. Your failure to attend the hearing will more likely than not cause an award of benefits and the probability that your account will be charged. If the issues under appeal are not work separation related, you may wish to attend the hearing but your attendance most likely will not be critical to the payment or denial of benefits.

If you filed the appeal and fail to attend the hearing, the case will be dismissed. If the claimant filed the appeal and you fail to attend the hearing, the hearing will go on without your input other than a review of the statements and documents you have previously submitted to the department.

You should be prepared to discuss all issues pertaining to the claimant's employment with you as outlined in the determination under appeal.

Do you need a lawyer? Employers must make that decision for themselves.

Hearings are designed to permit lay persons to represent themselves or another party. If the issues are complex, the other party has an attorney, or you think you may have difficulty presenting your case, you may wish to consult an attorney. If you intend to have an attorney represent you in the hearing, the attorney is required to file an appearance letter to the Appeals Unit. You should also contact the Appeals Unit as soon as you are aware that you will have an attorney to avoid scheduling delays.



Claimants may have representation in the Appeal Hearing by a Department Claims Representative. These individuals are department employees assigned to help the claimant present their best case before the Tribunal.

Does the Department provide language translation services to assist individuals with Limited English Proficiency (LEP) and sign language interpreters to assist individuals who are deaf or hard of hearing? Yes. If you need language translation assistance or a sign language interpreter if you are deaf or hard of hearing, notify the Appeals Unit immediately. If you need a sign language interpreter, or if you are deaf or hard of hearing, notify the Appeals Unit immediately. The Appeals Unit will obtain an interpreter for you.

Americans with Disabilities Act

This Department complies with the Americans with Disability Act. Should you require special assistance due to a disability as defined in the Act, in order to pursue your rights, please contact the Appeals Unit as soon as possible.

Is this the only step you can take in the Appeal process? No. This is the first step. In most cases the appeal is resolved at the first step, the appeal to Appeal Tribunal. This is the only step in which you can submit evidence, and so it is very important to provide all your evidence at this step.

There are, however, four more levels or steps in the appeal process in New Hampshire. The appeal process in this state is as follows:

1. Appeal Tribunal
2. Request for Reopening to the Commissioner
3. Appeal to the Appellate Board
4. Motion for Reconsideration addressed to the Appellate Board
5. Appeal to New Hampshire Supreme Court

There are specific time limits in order to be considered timely for the filing of an appeal in each of the above steps.

The Appeal Tribunal

What do you do when you get a *Notice of Hearing*? Read the *Notice of Hearing*

The *Notice of Hearing* will provide you with important information about the time, date and place of the Appeal Hearing. It is important that you report to the office no later than the time specified in the Notice. In fact, if you are not familiar with the office location, you should plan to allow yourself extra time traveling to the office to compensate for weather, traffic or losing your way.



What goes on at an Appeal Tribunal Hearing?

Testimony is taken under oath and tape recorded. The appeal is heard by the Appeal Tribunal, consisting of one person called the Chairperson. Both you and your former employee will be given the opportunity to testify and to question each other in an orderly fashion. The Chairperson will then issue a new decision on the claim for unemployment benefits.

Evaluate and prepare your evidence

The appeal hearing is a "de novo" review which means that the Chairperson reviews the case as if no prior decision had been made. The Chairperson is not bound by earlier findings or determinations made by the department.

This will be your only opportunity to present your evidence (other than newly discovered evidence). Further appeals usually only review testimony and other evidence introduced at this hearing.

Regardless of who filed the appeal, you should prepare your case in advance. You will then be ready to submit your side of the story without surprises due to lack of preparation.

If the claimant was fired from his job, you have the "burden of proof" to show that the claimant's actions were misconduct connected to his work.

Did you personally observe the misconduct?

One of the biggest mistakes employers make in presenting their case to the Tribunal is that the personnel manager comes to the hearing with second hand or hearsay testimony as to the events that occurred. You should make sure that first hand witnesses, such as the employee or foreman who observed the incident, present testimony in the hearing. Remember, the claimant will be presenting first hand information and if all you have to offer is "I was told that," you will be at a legal disadvantage in the hearing.

Present relevant documents to the hearing as exhibits. Do not "bury" the Chairperson in documents. You need those documents that bear directly on the incident(s) you are trying to prove. These documents can be time cards, warnings, company policies and the like. Make sure that you bring a copy of the documents not only for the Chairperson, but also for the claimant.

If there was a series of incidents leading up to the final act, be prepared to discuss these incidents also.

You may wish to review the department file to see what the claimant has told the department about the work separation. Contact the Appeals Unit after the appeal has been filed for a review of the record and for copies of any statements the claimant may have provided the department.

If the claimant quit his job, the "burden of proof" is on the claimant to show that his reasons for quitting the job had some connection to the work and was a reasonable course of action to take considering all the circumstances. There may be other reasons for leaving one's job which are not disqualifying, including leaving one's job when offered other full time work which subsequently 'falls through' or to escape domestic abuse.

In the case of a voluntary leaving, although the claimant has the burden to show he had good cause attributable to the employer, it is always a good idea to prepare your side of the case to limit "surprise." In cases of leaving work it is always a good idea to review statements and any documents the claimant has provided the department. Contact the Appeals Unit for this information after the appeal has been filed.

If you plan to bring witnesses, interview them before the hearing so you know how useful they will be to your case. It is very important that you stay focused on the issue under appeal and be brief and accurate in presenting your case as only relevant information is important to the Chairperson. Relevant information is information that bears directly on the issues that are being considered, including the credibility of witnesses and parties.

Be prepared to answer the claimant's allegations with witnesses having first hand information.

Bring resignation letters, information obtained from exit interviews and other pertinent information.

Because the Tribunal is not limited to discussion of just the issue under appeal, you may also be present when issues such as late filing of claims or the claimant's availability for work is discussed. If you have information that is important to these issues, you should say what you know. The Tribunal is required to determine all the issues relevant to the claim so that the case can be concluded.

Your Only Opportunity

The Appeal Hearing is your only opportunity to fully present your case. All claims records are a part of the evidence and you have the right to review all records. Call the Appeals Unit for an appointment to review the records after the appeal has been filed.

The Importance of Witnesses & Subpoenas

Contact the Appeals Unit if you wish to have a witness subpoenaed. The Chairman will determine whether a subpoena is necessary, and if the testimony is relevant to the issues under appeal.

It is extremely important to have a witness or witnesses present. If witnesses with first hand knowledge are unable to attend the hearing on the scheduled date, it is best to request a postponement of the hearing.

If you cannot have a witness or witnesses present, and you do not want to request a postponement, the next best option to support your case is to have the witness(es) available by telephone. Telephone testimony may not be allowed where questions of credibility are at issue.

In the event you are unable to have a witness or witnesses participate in person or via telephone at the hearing, your next best option is to obtain a sworn (notarized) written statement from the witness or witnesses. While a sworn (notarized) statement carries more evidentiary weight than an unsworn statement, it is important for you to understand that statements, in general, are less persuasive and have less evidentiary weight than the direct testimony of witnesses at the hearing.

Some Tips

Prepare in advance. Make a list of your key points. Be prepared to address all issues raised in the determination under appeal.

Stay calm. Do not be defensive or aggressive. You are at the hearing to present facts and to bring into question those facts presented by the other party. Your actions and conduct will be important factors in the Chairperson's assessment of credibility of your testimony. If the claimant quit his job because he alleges that a foreman was hostile and threatening, and the foreman comes to the hearing denying this behavior, yet demonstrates that behavior in the hearing, the Chairperson will most likely believe the behavior occurred.

Answer the Chairperson's questions as directly as possible.

The Chairperson will try to bring out the important and relevant facts in the case through questioning of the parties. You will be given an opportunity to question the claimant and any witnesses present at the Hearing. The Chairperson will also give you the opportunity to provide that information you feel is important to the case.

During the Hearing

Make written notes of anything the claimant says with which you disagree. This will help you to answer important points made by the claimant or help you question the claimant when it is your turn to speak.



Your notes can be used to refresh your memory of certain events, but you should take care that you not read these notes word for word. Notes read into the record are hearsay evidence.

It is generally more credible to testify from your own recollections as refreshed by the notes. Hearsay testimony is admissible evidence, but may be less believable or creditable.

Your questions to the claimant can be an effective tool for:

- Uncovering inconsistencies or "half truths" in the claimants testimony.
- Showing lack of credibility on the part of the claimant's or witnesses' testimony.
- Clearing up aspects of the claimant's testimony that you did not understand.

Enter Exhibits

Any documents you wish to have entered into the record of the hearing should be presented to the Chairperson during your testimony. Make sure to bring a copy for the claimant. Do not submit documents that have little or no bearing on the issues under appeal, as they simply divert the Chairperson's attention, may cause an objection by the claimant or simply make the record more difficult to review. In other words, they may not help your case.

Important information

You should make every attempt to attend the Appeal Hearing.

Either party may request a postponement but the postponement must be for good cause.

If the claimant was granted a postponement and now you wish to have a postponement, good cause is not "because the claimant had a postponement." Good cause is determined by the Chairperson, generally the supervising Appeal Chairperson makes the decision on a case by case basis.

If you wish to have a postponement, you should immediately call the Appeals Unit to request one.

If you miss a hearing for good cause, you may request to have the hearing rescheduled. Your request should be made in writing to the Commissioner. If you do not have good cause, your hearing will not be rescheduled.

Will you be permitted to talk to the Chairperson before the Hearing? No. The Chairperson generally will have no contact with you or any party outside of the hearing. This is to avoid the appearance of unfairness or of accepting evidence outside the hearing. Other members of the Appeals Unit will advise or assist you with procedural questions.

In the State of New Hampshire, Appeal Hearings are CONFIDENTIAL and are not open to the public.

Withdrawal of an Appeal

If you wish to withdraw your appeal, you must do so in writing. You should notify the Appeals Unit as soon as possible prior to the date of the hearing. If the claimant has filed the appeal, you cannot withdraw the appeal and the hearing will take place. If the appeal is withdrawn, the Certifying Officer's determination becomes final and cannot be changed.

Telephone Hearings

Most Appeal Hearings are conducted in the department's local offices and are "in-person" hearings.

For an interstate claim, the appeal is conducted over the telephone and is conducted much the same as the in-person hearing. You will be given a form with your *Notice of Hearing* that you must fill out and send back to



the Appeal Unit identifying the persons and telephone numbers you wish the Chairperson to call when the claimant calls in for the hearing. It is crucial that this information be received prior to the time the hearing is scheduled. If time is a problem call or FAX the information to the Appeals Unit. The *Notice of Hearing* will tell you the specific date and time of the hearing. Hearings are scheduled for Eastern Standard Time or Eastern Daylight Savings Time.

Two important points for Telephone Hearings

Have all witnesses available at ONE location.

Mail or FAX (603-656-6579) any documents you want to have considered as evidence in the hearing to the Appeals Unit, and the claimant so that they can be entered into the record. Do this immediately upon receipt of the *Notice of Hearing*. The documents must be received prior to the hearing date.

Shortly after the hearing is concluded you and the claimant will receive the appeal decision by certified mail.

Summary

- Read all forms and documents sent to you by the Appeals Unit.
- Be prepared and well organized.
- Bring witnesses to the hearing that support your position in the case.
- Bring pertinent and relevant documentation.

What can you do if you feel the decision reached by the Chairperson is unjustified? You may appeal the decision to the Commissioner. Your appeal must be received in the Commissioner's office or postmarked within fourteen (14) calendar days of the mailing date of the Appeal decision. Read the instructions on the reverse of the Appeal decision for further details on filing an appeal. This second step is called a "Request for a Reopening."

For more information: Contact the Appeals Unit at PO Box 9505, 300 Hanover St., Manchester, NH. 03108-9505 or call 603-656-6644. FAX 603-656-6579. Visit our Web Site at www.nhes.state.nh.us